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From:

Sent: Tuesday, December 2, 2008 3:30 pm

To:

Cc:

Subject: The answer to your question

We understand the facts to be as follows:

As of the close of business on December 30, Corp A and Corp B were the common parents of their respective consolidated groups for the consolidated tax year. At 11:59 PM, on December 31, Corp A merged into Corp B. You asked whether the Corp A subsidiaries are members of the Corp B and Subsidiaries consolidated group at any time on December 31, for purposes of including them in a statutory notice of deficiency for the Corp B and Subsidiaries consolidated group with respect to the group's consolidated return year ended on December 31.

The governing authority is Treas. Reg. § 1.1502-76(b)(1)(ii), which provides, in part, that a departing or joining member is deemed to have departed or joined a consolidated group as of the close of the day during which the event that causes the departure or entry occurs. Therefore, the first day of a joining member's consolidated return year is the day after the day on which the event causing the entry of the new member occurs. This current rule might be called the "midnight rule."

Here, Corp A's merger into Corp B is the event that caused the entry of the former members of the Corp A consolidated group into the Corp B and Subsidiaries consolidated group. Although Corp A merged out of existence 1 minute before midnight, the consolidated return regulations ignore this one minute prior to midnight and deem the Corp A consolidated group members as joining in the filing of a consolidated return with Corp B on January 1.

Answer: No former members of the Corp A and Subsidiaries consolidated group should be listed with the members of the Corp B and Subsidiaries consolidated group in the statutory notice of deficiency with respect to the latter's consolidated return year.